

**PLANNING COMMISSION
6:00 PM. APRIL 7, 2008
EDGEWOOD COMMUNITY CENTER
26 E. FRONTAGE ROAD**

MINUTES

In Attendance: Commissioners-Gary Chemistruck, Mike Dodge, Vicki Schober, Doyce Wilhite, staff members- Karen Mahalick, Marcus Rael Esq.

Absent: Del Rea, & Phil Todd

1. Call to order : The meeting was called to order at 6:00 p.m.

2. Approve agenda:

Action: A motion was made by Commissioner Wilhite seconded by Commissioner Schober, Ms. Mahalick asked that items 4 and 5 be reversed for the hearing, the motion passed 3-0 to approve the agenda with items 4 & 5 reversed.

3. Approve minutes of 03/17/08:

Action: A motion was made by Commissioner Wilhite, seconded by Commissioner Schober, and passed 3-0, to approve the minutes as presented.

PUBLIC HEARING-QUASI JUDICIAL PROCEDURE STAFF AFFIRMED PUBLIC NOTICE HAD BEEN POSTED.
COMMISSIONERS CONFIRMED THERE WERE NO CONFLICTS OF INTEREST/EX PARTE CONTACTS

4. Final Plat approval of Sandia Airpark, located on the south of Venus Road, approximately 1 mile east of Highway 344, Edgewood, NM, zoned for Residential R-1; requesting to subdivide 120 acres into 59 lots.

Jorge Gonzales was the representative for this request; Mr. Gonzales stated a subdivision improvement agreement had been submitted to the Town for approval the developers have been

PLANNING COMMISSIONERS' COMMENTS

Commissioner Schober inquired about the secondary access for the subdivision; Mr. Gonzales stated that the secondary access is gated on the eastern portion of the subdivision to prevent cross traffic on the runway.

PUBLIC COMMENTS

Frank Hetznecker was sworn in by Mr. Rael spoke about the danger of 3 story houses; Mr. Gonzales responded that these would be prohibited by covenants. Mr. Hetznecker spoke about the need for additional setbacks for safety of the taxiway. Commissioner Dodge asked if the additional setback proposed by the covenants would in Mr. Hetznecker's opinion be adequate. Mr. Hetznecker said they would.

Jeff Tipton, a realtor who was speaking for his clients was sworn in by Mr. Rael, inquired about being able to access the runway, as the increase in airport traffic would be detrimental to their property sales without equal access. Commissioner Schober inquired if Mr. Tipton was aware the runway was privately owned and access was a private matter

not under the authorization of the commission. Mr. Tipton said he was aware of the private ownership but wanted the commission to understand that additional air traffic in this area was detrimental to his clients.

Staff Comments: The subdivision improvement agreement has been approved, a disclosure statement, covenants as per discussion need to be submitted and updated water commitment need to be filed. Staff recommends approval of resolution 2008-28 final plat approval of Sandia Airpark north with those conditions.

Action: Commissioner Wilhite moved to approve the plat conditioned upon submittal of a disclosure statement and the covenants; the motion was seconded and approved unanimously.

5. Remand appeal of Pueblo Artesanos final plat phase one located off Rory Road, Edgewood, NM, zoned for Residential R-1; requesting final plat on phase 1 approximately 30.7 acres with 24 lots from a total of 70.53.

Mr. Rael, clarified that the appeal had been remanded back to the Commission based upon whether Rory road was a public or private easement. There are private easements and public easements, exclusive vs. nonexclusive. The issue of whether Rory road was intended to serve the total historic tract for Tract 3 Lands of Hill. Ms. Conger, a resident on Rory road stated that it is the position of the homeowners on Rory road that the easement only serves the eight lots presently on Rory road. The homeowners believe that the developer is attempting to circumvent the requirement to pave Rory road.

PUBLIC COMMENTS

Mr. Conger who was sworn in by Mr. Rael, stated that the developers did not have the legal right to use the public access portion of Rory road. Ms. Conger presented exhibits #1 thru #3 showing the progression of public vs. private access easement history of Rory road with the original section stretching from Highway 344 west to Moonlight Meadows and the sequence of subdivisions from the first 4 lots forward. Ms. Conger did not believe the Town could take the private access that existed on the original four lots and use it as public for the whole subdivision. Ms. Conger stated there were other subdivisions in the Edgewood area that utilize one point of access and asked the commission to require the southern access to be a single point of entry with a cul-de-sac dead end. Ms. Conger stated that the homeowners believe that the use of Rory road was inverse condemnation on the part of the Town.

Commissioner Dodge asked if there was a homeowners association, Ms. Conger responded that the covenants required the homeowners to maintain Rory road.

Commissioner Schober asked if Ms. Conger had knowledge of homeowner requirements under the covenants for Pueblo Artesanos. Ms. Conger knew of a draft that did acknowledge maintenance of the road, Ms. Conger stated further that the town had at one time done maintenance for Rory road.

Commissioners requested clarification from staff on how Rory road could have been accepted for maintenance if it was private. Staff responded that a plat had been submitted

which showed Rory road as public, the road had been listed on the road department maintenance list, but the road had never gone through the Commission or Council for official acceptance onto the road maintenance list.

Mr. Rael asked Ms. Conger whether or not she also accessed her property on Rory road over the private easement portion of the property to her north; Ms. Conger stated she did. Mr. Rael asked if all of the properties took their access subject to the easement created for Tract 3, Lands of Hill. Ms. Conger said she did but further stated that the subdivision development changes the character of the easement with this subdivision.

Mr. Rael read in the deed language stating that Ms. Conger's deed stated "subject to easements of record" this being the 1996 easement of record on Tract 3 Lands of Hill.

Ms. Russell, who purchased her lot 3-C on Rory road in 2007, was also sworn in and stated she believed the homeowners had won their appeal unanimously and was concerned that the homeowners were being put through double jeopardy. Ms. Russell stated the homeowners were fighting for their private easement, she believed the developers had surrendered the right to further subdivide their property when they created the first group of homes. The property owners did not purchase the property knowing that there would be 58 homes in the future and the developers had not filed a master plan of the area showing the future development plans. Ms. Russell stated the homeowners are fighting for their private easement.

Mr. Rael asked Ms. Russell if in her opinion the five lots created by the 2005 plat were all served by the original easement. Ms. Russell stated that in her opinion they were.

Mr. Rael asked if the easement stated it was a private easement, or documentation that Jensen/Ulrich submitted showed no intent to further subdivide. Ms. Russell did not have any knowledge or documentation of that intent.

Mr. Rael asked if Ms. Russell had documentation from the previous owner of lot 3-C showing there was no intent to further subdivide the bulk tract serviced by the original easement. Ms. Russell did not have any knowledge or documentation of that intent.

Mr. Rael stated that Ms. Russell testified that the bulk tract was served by the easement and requested confirmation that Ms. Russell was saying the developers should not use the private portion of Rory road to serve the bulk tract. Ms. Russell stated the homeowners should not have to maintain the road for the benefit of the 58 future lots.

Mr. Rael asked Ms. Russell about the covenants stating reference to the future land development for the bulk tract and that future landowners are required to enter into the same road maintenance agreement. Ms. Russell stated the covenants for the original eight lots are different from the 58 future lots.

Ms. Conger offered the Pueblo Artesanos Covenants as an exhibit.

Mr. Rael asked if Ms. Russell believed it was proper to use the private easement for the future homes. Ms. Russell stated she did not believe it made good planning sense.

Mr. Rael asked if Ms. Russell knew of the exception in the subdivision ordinance allowing for a private way to lead into a public way. Ms. Russell did not.

Mr. Rael asked if Ms. Russell purchased her property subject to easements of record. Ms. Russell stated it was purchased subject to the private easement of record.

Mr. Rael asked Ms. Russell to elaborate on her belief that the developers were attempting to

subvert the paving requirements.

Commissioner Schober asked what it was that Ms. Russell and the homeowners wanted from the developers? Ms. Russell and the homeowners refused to answer.

Commissioner Dodge asked how to rectify that 38 feet of the road is private and 12 feet is public. Ms. Russell responded that she believed the developers should come up with a better plan.

Mr. Rael agreed that 38 feet of private easement and 12 feet of public easement comprise the easement of the 8 lots at the beginning of Rory road.

David Campbell representing Jensen/Ulrich stated the easement was being expressed erroneously by the homeowners as their own use. Mr. Campbell pointed that even if the easement was private it was private for Tracts A thru E. The plats does state the easement is exclusive for Tracts A thru E; landowners have the benefit and burden of Tracts A thru E meaning the homeowners have the benefit of access to their property and the burden of future development potential. Maintenance for Rory road in the future will be an obligation of future landowners. Mr. Campbell referenced Ms. Russell's comment about Rory road not servicing the balance of the remaining property stating this property has the same access rights as the original 8 lots.

Commissioner Schober asked if Mr. Campbell if he was stating the easement was exclusive or non-exclusive? Mr. Campbell stated non-exclusive.

Commissioner Schober asked Mr. Jensen if he has ever paid homeowner dues? Mr. Jensen was sworn in and stated he has not as he has never owned a home therefore never paid dues. He stated that the landowners do not wear out the road, when you build a home you do wear to the road. Mr. Jensen stated that the commission had required that Rory be brought up to the subdivision standards prior to the final plat for phase one of Pueblo Artesanos which he believed had been done.

Ms. Russell requested the final plat subdivision request for September 4, 2007 Tract E-3-1 as exhibit 3.

Mr. Jensen gave a review of Pueblo Artesanos subdivision's approval process the final plat approval had been in October with seven (7) conditions; bylaws which included site built home requirements, upgrade of Rory road, signage for trails, design placement for mailbox clusters, traffic impact study, staking of monuments, maintenance of Rory road throughout construction. Mr. Jensen testified that Tract 3, Lands of Hill was purchased subject to the easement that ran through the lot, the easement was intended to be servient to all lots throughout the course of subdividing Tract 3, Lands of Hill.

Mr. Campbell testified that he was aware that the subdivision ordinance required the subdivision to have frontage on and direct access to a street and that there shall be direct

continuation of the street. These are design standards in Section 10.M. Mr. Campbell also testified that Rory road will always function as a local street; and their contract engineer had confirmed this design.

Mr. Rael asked Mr. Campbell if the private portion of Rory will serve more than eight lots- and whether the easement will serve all tracts within the original Tract 3, Lands of Hill. Mr. Campbell affirmed this.

STAFF COMMENTS

Ms. Mahalick testified that Pueblo Artesanos was given Preliminary plat approval and that is not being considered tonight. What was being considered was the final plat, phase one of Pueblo Artesanos. The applicants have met all requirements of the conditional approval for final plat phase one of Pueblo Artesanos; the need for vacating the cul-de-sac was discovered during design review as it is stated as a condition of future platting on the plat filed in 2005 for Tract 3-E. All parties have testified that Rory road serves all of the present and proposed lots; the subdivision regulations do not state that paving is required upon creation of 60 lots but rather that “lots served” over 59 require paving. Ms. Mahalick testified that the commission could ask for phasing of the paving or paving upon completion of Pueblo Artesanos. There is access off of Rory and to the south of Rory. Ms. Mahalick confirmed that all conditions of phase one final have been met.

Mr. Rael summed the purpose of the remand from council as a request to reconsider final plat approval for Pueblo Artesanos and the impact to Rory road; whether it serves all lots or only the eight lots and whether or not the road was every intended to be an exclusive easement.

Commissioner Schober moved to go into closed section for discussion at 9:29 P.M.; the motion died for lack of a second.

ACTION: Commissioner Dodge moved to approve final plat of phase one, however serious consideration needed to be given to the need for paving.

Mr. Rael asked for clarification of the motion: Is the motion based upon the finding that the final plat approval is based upon the finding that the road serves more than 60 lots and upon completion the road needs to be paved as per the requirement of the subdivision ordinance? Commissioner Dodge confirmed this was his intent.

Commissioner Wilhite seconded the motion. All voted in favor of the motion.

Commissioner Schober moved to recess for five minutes, the motion was seconded. All voted in favor of the motion.

Commissioner Schober moved to go back in session at 9:48 p.m.; the motion was seconded. All voted in favor of the motion.

6. Renewal of Development Agreement for Bassett Ranch

Ron Bohannon represented Mike Danzer in this request for a renewal of the Development Agreement based upon Mr. Danzer having to file a lawsuit to acquire water rights from the previous landowner and unforeseeable market conditions. Mr. Danzer was also working with the New Mexico Department of Transportation to gain a freeway exit for the development of

the lands.

Staff agreed that the lawsuit for water rights was in the public interest as the lands in this area did not have fire flow and the creation of these lines would serve to improve this area and staff supported the extension of the agreement for three years.

Commissioner Schober moved to approved the extension of the Development Agreement for a three year period of time because of the delay in obtaining water rights, design review for the interstate exchange and wastewater hook-ups was unavoidable and in the public interest. The motion was seconded and approved unanimously.

7. Zoning Ordinance Amendments Commissioners discussed staff recommendations to change the text of the commercial zone to reflect “structure” not “house for height limitations; the creation of a zoning category called Rural Residential which will allow for diverse lot sizes from one to five, based upon a submittal of a site plan and performance standards for swimming pools. Definitions for height will be brought forward for the commission to consider on April 21st.

8. Adjourn.

Action: A motion was made by Commissioner Schober to adjourn, the motion was seconded and passed unanimously.

THESE MINUTES ARE NOT OFFICIAL NOR ARE THEY A PERMANENT PART OF THE RECORD UNTIL APPROVED BY THE PLANNING COMMISSION AT THEIR NEXT REGULAR MEETING.